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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

ELECTRONIC FRONTIER FOUNDATION, Plaintiff,
v.
DEPARTMENT OF JUSTICE, Defendant.

) Case No. 10-cv-4892-RS
)
) **JOINT CASE MANAGEMENT**
) **CONFERENCE STATEMENT AND**
) **[PROPOSED] ORDER SETTING**
) **BRIEFING SCHEDULE**
)
)
)
) Judge: Hon. Richard Seeborg
) Date: November 17, 2011
) Time: 10:00 a.m.
) Place: Telephonic Appearance

Pursuant to the Northern District of California Standing Order and this Court's March 3, 2011 Order (Dkt. No. 27), the parties submit this Joint Case Management Conference Statement. The parties conferred on November 7, 2011 regarding the subjects identified in the Standing Order and their joint response is set forth below.

I. Information Requested by Standing Order

1. Jurisdiction and Service

The case was filed on October 28, 2010. (Dkt. No. 1.) All Defendants have been served. Plaintiff contends that this Court has both subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. §§ 552(a)(4)(B) and 552(a)(6)(C)(i). Plaintiff also contends that this Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331.

2. Facts

Plaintiff is the Electronic Frontier Foundation. Defendant is the Department of Justice and, specifically, its components the Criminal Division ("CRM"), Drug Enforcement Agency ("DEA"), and Federal Bureau of Investigation ("FBI").

In a letter dated May 21, 2009 and sent by facsimile to the FBI, Plaintiff requested under the FOIA all agency records, including electronic records, from 2007 to the present concerning the FBI's Going Dark Program.

In letters dated September 28, 2010 and sent by facsimile to Defendant DOJ's components, including CRM, FBI and DEA, Plaintiff requested under the FOIA records created on or after January 1, 2006 concerning the agencies' efforts to push for changes to federal surveillance law that would require communications providers to build in mechanisms that would provide the government additional capabilities to intercept Americans' communications.

On March 3, 2011, the parties agreed on a schedule for review and production of documents responsive to Plaintiff's FOIA requests. The components' processing and production of responsive records are discussed in Section 7 below.

3. Legal Issues

This is an action under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, for

1 injunctive and other appropriate relief. Plaintiff seeks the expedited processing and release of
 2 records that Plaintiff requested from Defendant Department of Justice and its components,
 3 Federal Bureau of Investigation, Drug Enforcement Agency, and Criminal Division, concerning
 4 the agency's efforts to push for changes to federal surveillance law to ensure that all services that
 5 enable communications be technically capable of complying with a wiretap order. Plaintiff
 6 asserts that the requested records concern a matter about which there is “[a]n urgency to inform
 7 the public about an actual or alleged federal government activity,” and were “made by a person
 8 primarily engaged in disseminating information.” 5 U.S.C. § 552(a)(6)(E)(v)(II); 28 C.F.R.
 9 § 16.5(d)(1)(ii).

10 **4. Motions**

11 On January 6, 2011, Plaintiff filed a motion for partial summary judgment seeking
 12 expedited processing of its September 28, 2010 FOIA request along with an order requiring that
 13 processing be completed of all materials responsive to both its May 21, 2009 and September 28,
 14 2010 FOIA requests within 10 days of the Court’s order. (Dkt. No. 16.) Defendant filed its
 15 opposition on January 25, 2011, (Dkt. No. 19), and Plaintiff filed its reply on February 3, 2011
 16 (Dkt. No. 20).

17 On February 17, 2011, a hearing on Plaintiff’s motion for partial summary judgment was
 18 held before the Court. Following the hearing, the Court issued an order on February 17, 2011
 19 (Dkt. No. 22) instructing the parties to meet and confer in an effort to negotiate a mutually
 20 acceptable processing schedule. On March 3, 2011, after the parties agreed on a processing
 21 schedule, the Court denied Plaintiff’s motion without prejudice.

22 The parties anticipate this case will be resolved on cross motions for summary judgment
 23 and intend to file those according to the schedule laid out below in Section 17.

24 **5. Amendment of Pleadings**

25 Neither party anticipates amending the pleadings.

26 **6. Evidence Preservation**

27 As this is an action under the FOIA and discovery is rarely used, the parties have not

discussed evidence preservation.

7. Disclosures

CRM and DEA contend that they have now completed the processing of documents responsive to Plaintiff's September 28, 2010 request. The FBI contends that it has substantially completed the processing of documents responsive to Plaintiff's FOIA requests and anticipates completing the processing of all remaining responsive documents, and the production of any remaining responsive and non-exempt documents to Plaintiff, by the week of November 21, 2011. The parties expect to provide the court with more detailed information about the number of documents processed and released prior to the November 17, 2011 case management conference.

8. Discovery

The parties do not anticipate conducting discovery in this case.

9. Class Actions

This case is not a class action.

10. Related Cases

There are no related cases.

11. Relief

EFF seeks injunctive relief with respect to the release and disclosure of all records responsive to its May 2009 and September 2010 FOIA requests. EFF also seeks reasonable attorney's fees incurred in this litigation.

12. Settlement and ADR

The parties have not yet been able to identify a mutually acceptable basis upon which to settle this case and currently do not believe ADR would be helpful.

13. Consent to Magistrate

Defendant declined to proceed before a Magistrate Judge.

14. Other References

The parties do not anticipate needing other references.

1 **15. Narrowing of Issues**

2 The parties are currently discussing ways to narrow the issues.

3 **16. Expedited Trial Procedure**

4 The parties anticipate this case will be resolved on summary judgment and do not
5 anticipate a trial.

6 **17. Scheduling**

7 The parties propose the following schedule for summary judgment briefing:

8	February 2, 2012	Defendant files Motion for Summary Judgment
9	March 1, 2012	Plaintiff files Cross Motion and Opposition
10	March 15, 2012	Government files Cross Opposition and Reply
11	March 29, 2012	Plaintiff files Reply
12	April 12, 2012	Hearing on Cross Motions

13 **18. Trial**

14 The parties anticipate this case will be resolved on summary judgment and do not
15 anticipate a trial.

16 **19. Disclosure of Non-Party Interested Entities or Persons**

17 There are no non-party interested entities or persons involved in this case.

19 A proposed Order embodying this agreement and the proposed schedule is below.

20 **II. Stipulated Briefing Schedule**

21 This matter came on for a status hearing before the Court on November 17, 2011. In
22 preparation for the status hearing, the parties have conferred and agreed to a schedule for
23 summary judgment briefing. The parties jointly request that the Court adopt the parties' proposed
24 schedule.

25 Defendant DOJ and its components DEA, DOJ Criminal Division
26 and FBI move for summary judgment.

February 2, 2012

27 Plaintiff files opposition and cross-moves for summary judgment.

March 1, 2012

1 Defendant files reply and opposition to Plaintiff's motion. March 15, 2012
2 Plaintiff files reply in support of motion for summary judgment. March 29, 2012
3 Hearing on cross motions. April 12, 2012

4 DATED: November 10, 2011 Respectfully submitted,

5 /s/ Jennifer Lynch
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13
14 *Attorneys for Plaintiff*

15 DATED: November 10, 2011
16 /s/ Nicholas Cartier
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19
20 *Attorneys for Defendant*

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22 **CERTIFICATE OF SERVICE**

23 I hereby certify that on November 10, 2011, I caused a copy of the foregoing to be served
24 on counsel for Defendant via the Court's ECF system.

25 /s/ Jennifer Lynch
26 JENNIFER LYNCH

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2 **GENERAL ORDER NO. 45(X) CERTIFICATION**
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I attest that I have obtained the concurrence of Nicholas Cartier, counsel for Defendant, in
the filing of this document.

5 */s/ Jennifer Lynch*
6 JENNIFER LYNCH
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PURSUANT TO STIPULATION, **IT IS SO ORDERED.**

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10 Dated: _____

11 Hon. Richard Seeborg
12 United States District Judge
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